

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Claims Div.*

**8276**

FILE: B-191327

DATE: November 8, 1978

MATTER OF: Charles L. Mangers--Retroactive substitution  
of sick leave for annual leave

DIGEST: Employee entitled to use sick leave requested that annual leave be charged instead. Subsequently, employee desired to retroactively substitute sick leave for the annual leave charged. Once annual leave is granted, an employee may not thereafter have such leave charged to sick leave and be reccredited with the amount of annual leave previously charged.

This action is at the request of Mr. Don Omans, Authorized Certifying Officer, National Park Service, U.S. Department of the Interior, for an advance decision concerning the request of Mr. Charles L. Mangers to substitute 208 hours of sick leave for an equal amount of annual leave used during the 1976 leave year. We understand that the purpose of this request is to make the annual leave available for restoration under Public Law 93-181, approved December 14, 1973, 5 U.S.C. § 6304(a) (1976).

Mr. Omans states that the Park Service's investigation revealed that Mr. Mangers requested annual leave on October 11, 1976, because of a scheduled physical examination. As a result of findings made at the examination, Mr. Mangers was required to be hospitalized. During the period of hospitalization, he was carried in an annual leave status. Copies of the leave cards show that he returned to work from November 1, 1976, through November 26, 1976, but that he again was placed on annual leave on November 29, 1976. He remained on annual leave until December 20, 1976, when he requested that he be placed on sick leave. While the record is not clear, we assume that Mr. Mangers again requested annual leave for the period beginning on November 29, 1976.

Mr. Mangers explains the circumstances surrounding his original request that he be placed on annual leave at the time he was hospitalized, as follows:

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"When I first went into the Hospital and when my condition was diagnosed, I, of course, had no idea as to what the future might hold for me. We had visions of long extended periods of hospitalization/incapacitation and were concerned that I might run out of sick leave and be left with no income. So, I asked initially that I be placed on annual leave. Then in mid-December when my condition was still quite serious and with an uncertain prognosis, I realized that if my situation was indeed terminal, any unused annual leave would be paid to my survivors and that my period of illness was an appropriate charge to sick leave. Accordingly, the period from December 20 until I finally returned to duty was charged appropriately to sick leave. But, I had been charged with 208 hours of annual leave prior to the changeover which was not restored."

Mr. Omans states that our decision 54 Comp. Gen 1086 (1975) appears to prohibit the retroactive substitution of sick leave for annual leave. However, he contends that the present case is distinguishable because Mr. Mangers was not thinking in his best interest due to the serious nature of his illness when he requested annual leave. Also, he questions whether under the circumstances, Mr. Mangers should have been carried in an annual leave status for an extended period without seeking clarification from the employee.

In 54 Comp. Gen 1086, *supra*, cited by Mr. Omans, we held that an employee who specifically requests that he be charged annual leave when he is entitled to use sick leave may not retroactively have such leave charged to sick leave and be recredited with the annual leave. Furthermore, in B-181087, June 21, 1974, we stated:

"\* \* \* [W]hen an employee has accepted compensation for a period of absence from duty upon the basis of his approved application for annual leave, with a consequent charge against accrued annual leave, the employee must be regarded as having made his election, and the

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obligation of the United States having been discharged, such right and obligation are not subject to change unless a law or regulation having the force and effect of law expressly provides therefor."

The record indicates that Mr. Mangers made an election to be charged annual leave to cover a period of his illness. The fact that in the long run, his election did not prove to be a judicious one is not a basis for a retroactive substitution of sick leave for the annual leave charged. Likewise, we do not find the fact that the agency continued to carry Mr. Mangers in an annual leave status without requesting confirmation as being relevant in view of Mr. Mangers' statement as to why he initially requested annual leave.

Accordingly, we find no basis upon which to distinguish the present case from our decision in 54 Comp. Gen. 1086, supra. The holding of that case serves to prohibit the retroactive substitution of sick leave for annual leave previously charged to Mr. Mangers. Thus, the 208 hours of annual leave is not available for restoration under 5 U.S.C. § 6304(d), supra. See B-181087, supra.

*R. F. K. 11m.*  
Deputy Comptroller General  
of the United States